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Hearing Date: May 14, 2019 at 2:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MANHATTAN RIVER GROUP, LLC,	:	Case No.: 18-14125 (SHL)
Debtor.	:	

CITY OF NEW YORK'S PRELIMINARY OBJECTIONS TO DEBTOR'S MOTIONS FOR (I) ORDER AUTHORIZING DEBTOR TO ENTER INTO MANAGEMENT AGREEMENT; AND (II) ORDER AUTHORIZING DEBTOR TO OBTAIN CREDIT

The City of New York and its agency, the New York City Department of Parks and Recreation (the "**Parks Department**") (collectively, the **"City"**), by its counsel, ZACHARY W. CARTER, Corporation Counsel of the City of New York, hereby files these preliminary objections to the separate motions of Manhattan River Group, the above captioned Debtor and Debtor-in-Possession **(**the **"Debtor"**), seeking entry of: (i) an order authorizing the debtor to enter into a management agreement (the "**Management Motion**") [Docket No. 34]; and (ii) an order authorizing the Debtor to obtain credit (the "**Loan Motion**") [Docket No. 37]. In support of its preliminary objections the City respectfully represents:

1. The City has had very little time to review the Debtor's Management Motion and Loan Motion. In order to comply with the Court's orders setting a preliminary hearing regarding the two motions, the City is filing these preliminary objections setting forth its initial concerns. However, other issues may need to be addressed, and the City does not waive (and expressly reserves) its rights to make additional or supplemental objections in connection with the motions and any continued or final hearings respecting them.

The Management Motion

2. The Management Motion appears to be primarily concerned with the operation of the restaurant under the License Agreement dated June 25, 2009 for the Construction, Operation and Maintenance of a Full Service Restaurant and Lounge at the Dyckman Marina (the "**Restaurant License**"), a copy of which was attached as an exhibit to the Debtor's earlier motion to extend its time to assume or reject. Under the Restaurant License, the City has the right to approve in advance any change in the operation of the restaurant. Before the City would be in a position to approve of any entity operating the restaurant as the "Manager" (as defined in the proposed Management Agreement), the City should conduct an extensive background check, the proposed Manager should enroll in the City's Procurement and Sourcing Solutions Portal (commonly referred to as "PASSPort") and receive clearance therein, and the City would need to conduct a Vendor Name Check through the Department of Investigation.

3. Further, the Management Motion does not explain which persons or principals will control the Manager. Therefore, without the due diligence process discussed above, and additional information regarding the proposed ownership interests, the City will not be able to determine if doing business with the Manager is in the best interests of the City.

4. The Management Motion and the proposed Management Agreement incorrectly suggest that Debtor has a lease with respect to the City property that has functioned as a restaurant at 348 Dyckman Street. However, as clearly set forth in the Restaurant License, the Debtor has been only granted a license that is terminable at will by the City. *See e.g*. Section 3.2 of the Restaurant License.

5. Similarly, the Management Motion and the proposed Management Agreement do not acknowledge that the Management Agreement or any similar agreement must be subordinate to the terms of the Restaurant License. Manifestly, the Debtor cannot grant powers that it does not possess to any other entity.

6. No operational plan was submitted with regard to the Management Agreement. All elements of the operations of the restaurant, e.g., hours of operation, menu items and prices, entertainment (all mentioned in Section 1.2 of the Management Agreement); trade name (as mentioned in Section 4.1 of Management Agreement), including advertising and signage, are subject to the City's prior approval. *See* Section 10 of the Restaurant License. Without further details, the City is not in a position to state whether it would approve any such operational plan.

7. Section 2.01 of the Management Agreement states that Gross Sales would include "any revenues received resulting from entrance to the premises and parking fees." This suggests the "Owner" (as defined in the Management Agreement) and/or Manager is considering charging entry / parking fees; however, the City has repeatedly stated that cover charges/entrance fees and valet parking at the licensed premises are not feasible.

8. Section 2.01 of the Management Agreement also create a definition for "Gross Sales" which seems to closely resemble the definition of "Gross Receipts" in the Restaurant License, which would likely lead to confusion.

9. Section 1.6 of the Management Agreement states that the Manager "will aid Owner in applying for, obtaining and maintaining all licenses and permits required… in connection with the management and operation of the Restaurant." However, upon information and belief, when the New York State Liquor Authority ("**NYSLA**") suspended the Debtor's liquor license, the Debtor proposed a remedial plan, but NYSLA rejected it. Apparently, the Debtor has chosen to accept NYSLA's decision, and has agreed to surrender its liquor license. The Management Motion contains no information as to how either the Debtor or the Manager will attempt to obtain such a liquor license.

10. Moreover, upon information and belief, the City believes that the restaurant's Public Assembly permits expired on January 3, 2019. The restaurant cannot operate without a public assembly permit. The Management Motion does not explain how the Manager or the Owner intends to obtain the necessary permits.

11. The Management Motion does not explain how the Owner intends to generate sufficient revenue to cover its costs, including license fees to the city, particularly in view of the current lack of a liquor license.

12. The Management Motion and the proposed Management Agreement seem to suggest that the Debtor intends to utilize a building called the "Quonset Hut" for restaurant operations. The City has repeatedly explained that this building is needed for operation of the marina facility. Moreover, the concession agreement between Debtor and the City of New York acting by and through the Department of Parks and Recreation dated June 25, 2009 (the "**Marina License"**) clearly states in section 10.36 that the "Quonset Hut at the Licensed Premises may *only* be used for purposes associated with marina operations and may not be used as event space" (emphasis added).

13. Section 3.01 of the Management Agreement is not consistent with the audit provisions of the Restaurant License, and accordingly would not be acceptable to the City. See Section 5 of the Restaurant License.

14. Section 3.03 of the Management Agreement purports to give the Manager a right to set off monies owed to Debtor against monies owed by the Debtor to the Manager. The City asserts that any such right should be subordinate to the obligations of the Debtor to the City; in other words, all payments owed to City should be made before the Manager can recoup its own fees.

15. Section 3.04 of the Management Agreement insulates the Manager from all liability other than gross negligence or willful misconduct and requires the Debtor to indemnify the Manager. The City objects to this provision. If it finally approves the arrangement, the City would require the Manager as well as Debtor to indemnify the City. Moreover, the City believes that the Manager should be responsible for its own negligence.

16. Section 7.02 of the Management Agreement allows the Debtor and the Manager to modify the Management Agreement. Again, the City notes that any such modifications would also have to be approved by the City.

The Loan Motion

17. The Loan Motion suggests that the Debtor will be able to commence operations in May. As noted above, however, the Debtor does not yet have an approved operation plan; moreover, it is far from clear that the Debtor can obtain the necessary permits to operate, even if the City were to approve any such operations plan.

18. The proposed budget attached to the Loan Motion appears to be unrealistic. For example, it appears to assume that the Debtor will obtain a liquor license and that the City

would approve the operation of a beer garden. There appears to be no credible basis for the Debtor's assertion, at ¶15, that "the Debtor expects to be operating at or close to break even in the upcoming months."

19. There is no justification for the granting of either a super-priority or lien status. In fact, the Loan Motion is inconsistent on this issue. Paragraph 15 states: "The Lender is willing to lend the necessary funds on terms which the Debtor believes are quite favorable, including requiring no security interest or personal guarantees and requiring only an administrative claim in return." (Emphasis supplied). However, in Paragraph 18, the Debtor states that "the Lender is seeking (a) a first priority lien on all of the Debtor's personal property assets, which assets are not subject to any lien or security interests, and (b) a super priority administrative expense claim . . . ." Authorizing the Debtor to borrow on the first basis might be justified; borrowing on the more onerous latter terms is not justified.

20. The Loan Motion contains no information on the Debtor's efforts to obtain credit on less onerous terms; accordingly, there is no basis to grant a super priority. Moreover, the Debtor may have been piling up post-petition debts; it certainly has not remained current on its obligations to the City. To give a purported lender entering at this stage priority over such administrative claims would not be just.

21. In addition, Paragraph 14 of the proposed Loan Agreement provides that the "Lender shall have the sole discretion to convert all of the then-outstanding indebtedness hereunder to equity in the reorganized Borrower entity." The Loan Motion contains no details regarding the ownership interests in the Lender, although it states, at ¶9, without support, that "the Lender [is] an arms-length party with no connections to the Debtor or its insiders. . . ." In fact, if the Lender did have a connection to the Debtor or its insiders, any infusion of cash into the business should be

made as an equity contribution, and not as a loan with priority over the claims of the City and the Debtor's other creditors. Furthermore, if the purported Lender really intends to take over the ownership of the Debtor, then the commitment to convert its purported indebtedness to equity should not be left to its sole discretion, but should be required at this juncture.

WHEREFORE, the City respectfully requests that the Court deny approval at this time of the Debtor's Management Motion and Loan Motion, except upon terms consistent with the objections expressed herein, and that the Court grant to the City such other and further relief as the Court determines to be just.

Dated: New York, New York
May 13, 2019

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